

ORIGINAL

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Arizona Corporation Commission

DOCKETED



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December 22, 2003

Docket Control

Arizona Corporation Commission

1200 West Washington Street

Phoenix, Arizona 85007

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SUBJECT: INTERVENER SUREBUTTAL TESTIMONY of John Breninger

REFERENCE: Docket No. W-03512A-03-0279

Commissioners, and Hearing Officer:

The following Surrebuttal Testimony and Exhibit for the referenced Docket No. are hereby submitted in accordance with the published schedule contained in the ACC Procedural Order dated October 24, 2003. The items numbered 1 through 9 below are addressing the "Rebuttal Testimony of Pine Water Company, Inc.", dated December 1, 2003.

1. "Pine Water is not responsible for the water shortage problems in Pine, Arizona. In fact, the District's own investigative report concludes that the area has been plagued by recurrent water supply shortages since the 1980s." Ref: Page 2, Lines 11-13. This statement attempts to perpetuate the notion that Pine Water Co. is isolated from the reality that they have been granted a CC&N to serve this community. If they inherited a deficient supply or inadequate infrastructure from the prior owners, they have not been excluded from undertaking a viable solution to overcome these deficiencies and inadequacies. My Direct Testimony has been submitted to break out of this mind-set by identifying where and how to find adequate water for this community as a whole, and Pine in particular.

2. "Further, Pine Water is uncertain whether the costs of exploring for new water supplies that may never materialize are prudent or reasonable." Ref: Page 2, Lines 17-19. There is sufficient data and information now available for Pine Water to develop the cost structure necessary to bring this source of water into production. The financial viability may require an infrastructure implementation that draws upon the full water consumption of the broader community of Pine/Strawberry as it continues to develop under future growth. Stopping growth or constraining the consumption of water that is based upon the production patterns of the past is self-defeating. **Do the Homework!**

3. "... the \$15.00 per 1000 gallons charged for "wheeling" water purchased from Strawberry Water to Pine Water represents the most efficient and low-cost alternative for ratepayers." Ref: Page 3, Lines 3-5. I challenge the ACC Staff and Brooke Utilities to justify the wheeling charges of \$15.00 per 1000 gallons for water augmentation to Pine Water. If the part of the supply of water to Pine Water must come from outside its local area, then ACC should bring the purview of that infrastructure under the regulatory process. The development of the water supply from the R-Aquifer in Strawberry must not be held hostage to a system that precludes its viability.

4. "Q. DOES THE DISTRICT'S INVESTIGATION OF GROUNDWATER AVAILABILITY REACH ANY CONCLUSIONS REGARDING THE REASONS

FOR WATER SHORTAGES IN THE PINE-STRAWBERRY REGION?

- A. Yes, the report concludes that the aquifer systems in the area of the District, which area includes Pine Water's CC&N, are inadequate to support "**existing or future** water demands." Ref Page 4, Lines 18-24. This testimony appears to draw the conclusion that the report stated all "...the aquifer systems in the area of the District," The Report did not. It did state, "...the aquifers used by existing private and public water company wells in the area, indicate the aquifer systems in the Schnebly Hill and Supai strata are not an adequate resource..." Again I contest the notion, whether they be Freudian slips of thought, or are perceived as real, that there is an inadequate supply of water available to be developed in the area. Pine Water has been granted a CC&N to serve this community, and they are not excused from fulfilling that obligation.

5. "Even more importantly, the report reaches the ultimate conclusion that:

The new information and concepts provided by this investigation indicate that there is a need for **considerable additional investigation** to refine the quantification of groundwater resources in the area as well as to quantify existing and future demand for water. It is anticipated that this report will provide a new framework for effective accomplishment of future investigations of the groundwater resources in the PSWID area. *Id.* at 11(emphasis supplied)."

Ref: Page 7, Lines 18-23. This "**considerable additional investigation**" alluded to in the Report will be a result of drilling and developing the initial set of wells, followed by significant aquifer testing from the well field. There is no short-cut to this process. Those who want to study something else, (i.e., PSWID/Gila County Supervisors, et al), or wait for someone else to make the investment, will fail to meet the need for water from within this community. It is incumbent upon the ACC and Brooke Utilities (for Pine and Strawberry Water Cos.) to undertake this development. This may be beyond the scope of this Rate Case Application, and that is why I testify to reject this Application so that it may be restructured to achieve a solution to the failure to supply adequate water to the community.

6. "Further, knowing where water lies beneath Strawberry does not mean that it is physically, legally or economically deliverable to the Pine Water system..." Ref Page 8, Lines 6-8. "Also, I do not know much about the validity of such claims, but I suspect Salt River Project might contest any attempts to withdraw groundwater in the Strawberry Valley for delivery to Pine, Arizona. In sum, there remains considerable uncertainty over the physical and legal aspects of such a plan." Ref: Page 8, Lines 18-22. I challenge the proposition that the water is not "legally" deliverable. The basis in law as applied in Arizona is solidly favourable to this proposed site for wells from the R-Aquifer serving this community. Others may raise a huge cry about this, but the parameters of this Investigation were very carefully defined to arrive at a technical solution that is fully supported by current law and adjudications. May the others stay within the law as well. Deliverable water, "physically" and "economically" will be subject, not to opinion, but to how technically soundly it is pursued. This community is uniquely blessed to be situated atop the R-Aquifer where its groundwater can be tapped from private land and within the legal parameters of Arizona water law. I do not understand Mr. Hardcastle's concern about Salt River Project (SRP) contesting the withdrawal of groundwater in Strawberry for delivery to Pine, which has been done regularly ever since the completion of the Project Magnolia pipeline without objection. They (SRP) are outside of these considerations. I maintain that this groundwater is outside of "subflow or tributary flow" considerations of the current adjudications that are still in-process. However, they (SRP) have used intimidation before, to get their way, where they have no rights based in law. I do not understand Mr.

Hardcastle's concern about an additional pipeline that appears to be within his CC&N. Or does he mean that the Project Magnolia pipeline will not be a part of this solution?

7. "...Pine Water has, for years, differed with the views of the District in this regard, as such views do not consider that developing a water supply solution to Pine, Arizona's dilemma without a corresponding economic solution that is affordable to Pine Water's ratepayers represents no solution at all. Mr. Breninger's testimony merely furthers this historic shortcoming on the part of the District." Ref: Page 10, Lines 19-24. Mr. Hardcastle's rebuttal testimony keeps coming back to this "dilemma" of no solution for an independently structured Pine Water Co. It is incumbent upon the ACC and the Brooke Utilities and its subsidiary companies to find a common regulatory amalgamation that can solve the problem.

8. Errata: In the "Rebuttal Exhibits" section, "First Set of Data Requests from Pine Water Company, Inc., to Intervener John Breninger" the Response to Request 1.4, the statement, "This Concept/Proposal document, in the original May 8 version, was adopted by the PSWID Board in the July 2003 meeting,..." should read: "May 2003 meeting."

9. There are numerous additional points within this Rebuttal Testimony of Hardcastle and Bourassa, along with their Rebuttal Exhibits and Schedules, that seem to respond to Testimony or interrogatory exchange with PSWID. Some of these appear to be invalid or incorrect and inappropriate to me, on the part of PSWID as Intervener, and I choose not to respond. However that does not mean that I acquiesce or accept them, but I just do not believe I can properly respond within the context of this Rate Case Application.

10. In summary, and to further amplify the position of the Pine community as is apparent to me, I attach the enclosed Exhibit, Letter of Public Input, dated December 8, 2003, that I was precluded from presenting to the ACC Commissioners at the public input meeting in Pine.

- End of Surrebuttal Testimony -

EXHIBIT: Letter of Public Input: (Ref: item 10, above)

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December 8, 2003, Revised 12-17-03

Arizona Corporation Commission (ACC)

Public Input Meeting in

Pine, Arizona

Reference: ACC Docket No. W-03512A-03-0279

"In the Matter of the Application of Pine Water Company..."

Dear Commissioners:

Please consider this input of community viewpoint and concern regarding the issue of the Rate Case Application for the referenced item ACC Docket No.

There are several parts to this issue: Water, Money..., and Pipe Dreams

The Application is about money. The community has been fired up about money – and has become sharply focused on the bad regulation and bad management of the Pine Water Co., under the ACC, through a highly focused campaign of hate and discord. The recent Temporary Rate Increase to pay for water augmentation charges is a monstrosity of unpredictable water charges. The ACC-approved charges fluctuate wildly month-to-month and the consumer has no control or ability to predict what the next water bill will bring. This is cruel for people on a fixed and limited income. At the same time, Pine Water Co. did not maintain storage levels of water adequate to meet the community demand, as was evident by the continued CONSERVATION Level #5 postings.

Water is the bigger, the primary, issue. The ACC, as the regulating agency, seems to make it profitable for the Company to continue operating with an inadequate water supply as we continue to see in the summertime, year after year. We have found out this year that we have the water. The nay sayers have said, "There is no water." Even the ACC Consumer Affairs has joined in and said the same thing. Now, we know they are wrong.

This year, the Pine / Strawberry Water Improvement District (PSWID) study has identified where and how to get the water we need. A few local developers and the Gila County Supervisors have high-jacked the PSWID away from local Board rule; abandoned this direction to our water supply solution; and now are off chasing "**pipe dreams**" with the U.S. Bureau of Reclamation, SRP, Town of Payson and others. They are now trying to commit the community to another long study with no effort to get any water now. They have waged a campaign of charges with hate and discord to show how crooked and bad the water company is, and the ACC has been included in their sniping.

This summer, we expect to be under restrictions again, paying a high rate for augmented water deliveries, and it is not necessary. We have the water! Get on with it! Since the Gila County Supervisors, in the name of the PSWID, have abandoned the realities of getting our water locally and are dreaming of miles of pipes, it becomes incumbent upon the ACC and the private water companies to do the right thing and get that water ASAP. **Get the water – let us live like real people again.**

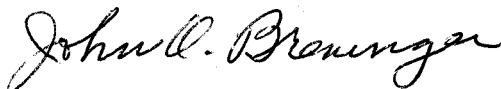
Respectfully Submitted,

/s/

John Breninger, Pine Citizen/Resident and Customer of Pine Water Company,
[End of Exhibit]

FILE: ACC03012JB-A.doc

Testimony respectfully submitted,



John O. Breninger, Intervener

A Copy has been mailed this 22nd day of December, 2003, to the company,
Pine Water Company
3101 State Road
Bakersfield, California 93309,

and hand delivered to its counsel,
Fennemore Craig
C/O Jay L. Shapiro
3003 N. Central Avenue, Ste. 2000
Phoenix, Arizona 85012

And Intervener, Pine /Strawberry Water Improvement District (PSWID)
C/O John G. Gliege, Attorney for PSWID
P.O. Box 1388
Flagstaff, Arizona 86002-1388

And to Intervener,
Robert M. Cassaro
P.O. Box 1522
Pine Arizona 85544

and this original plus 13 copies, hand delivered this 22nd day of December, 2003, to Docket Control at ACC for distribution to all other parties of record in the case.

Respectfully,

A handwritten signature in cursive script that reads "John O. Breninger". The signature is written in dark ink and is positioned above the printed name and title.

John O. Breninger
Intervener

FILE: ACC Surrebuttal 12-22-03JB.doc